

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3083 of 1984

Date of decision: 9-7-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

HEIRS OF SHARADKUMAR J CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

Mr. H.M. Mehta, Senior Advocate, with
MRS VASAVDATTA BHATT for Petitioners
Ms. P. S. Parmar for Respondents No. 1
MR JIVANLAL G SHAH for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/07/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The matter in dispute pertains to termination of service of the petitioner (since deceased, now represented by his heirs and legal representatives) by respondent No.3 from the post of Principal on the ground of his unsatisfactory work. The petitioner was initially recruited in the institution for the post of Assistant Teacher on 9-7-1973. Thereafter he was selected on the post of Principal of the institution and he was given appointment on probation. However, as stated earlier, his performance as Principal was not found satisfactory and as such under the impugned order dated 7-1-1984 passed respondent No.3, his services were brought to an end. The petitioners filed appeal before the Director of Higher Education, State of Gujarat, Gandhinagar. Though the order of termination of his services as Principal of the institution was not interfered with, respondent No.2 directed the institution to consider the case of the petitioner for continuing him on the post of Assistant Teacher. The institution has considered the matter, but under its order dated 23rd April, 1984 has turned down the suggestion of respondent No.2 to continue the petitioner as Assistant Teacher.

2. The petitioner, since deceased, was appointed in the institution as Principal on 24-7-1981 and it was an appointment on probation after selection for the post of Principal. But the appointment on the post of Assistant Teacher does not terminate automatically. In case the work of the petitioner, since deceased, was not found satisfactory on the post of Principal, and the institution decided to discontinue him as Principal, I fail to see any justification in the action of the respondent institution not to take back him on the post of Assistant Teacher. Even if the services of the petitioner, since deceased, on the post of Principal were not satisfactory, then, by terminating his services as Principal, his services as Assistant Teacher in the institution will not automatically come to an end. On his termination from service as Principal, his lien on the post of Assistant Teacher survives, and he should have been allowed to continue on the said post. Respondent No.2, while dealing with the appeal filed by the petitioner, since deceased, has not considered this aspect of the matter and he felt satisfied by giving direction to the institution to consider the case of the

petitioner for continuing him as Assistant Teacher in the institution. The order of the Director to the aforesaid extent is not correct and it cannot be allowed to stand. However, during the pendency of this petition, the petitioner has expired and now his legal representatives are on record. So the question which arises is as to what relief now should be granted in favour of the heirs and legal representatives of the deceased.

3. This court cannot now give direction to respondent No.3 to continue the petitioner, since deceased, in service. Otherwise also, in case the petitioner (since deceased) would have continued in service, his services would have come to an end on the date on which he expired. The only relief which can now be given to the heirs and legal representatives of the deceased teacher to direct to respondent No.3 to pay them the amount of salary of the deceased of the post of Assistant Teacher at the rate at which he would have drawn the salary on the date of termination of his services, till the date of death. Pay of the deceased petitioner on the post of Assistant Teacher shall be notionally fixed on the date of termination of his service as Principal and thereafter if any revision was made or if there was any further increase in the pay, those benefits shall also be given to the legal heirs of the deceased. The amount which is payable to the heirs and legal representatives of the deceased shall be determined within a period of three months from the date of receipt of certified copy of this order, and payment thereof shall be made within a period of next two months. In case payment of arrears of salary of the deceased is not made to the heirs and legal representatives of the deceased within the stipulated period as aforesaid, they shall be entitled to interest thereon at the rate of 15% per annum from the last date of the period stipulated hereinabove. The Special Civil Application succeeds and the same is allowed in the aforesaid terms. Rule made absolute accordingly. No order as to costs.

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